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April 1, 2003

Country of Origin Labeling Program
Agricultural Marketing Service, USDA
Stop 0249, Room 2092-S
1400 Independence Avenue, S.W.
Washington, DC 20250-0249

RE: Docket No. LS-02-13

BERNARD EGAN & COMPANY is pleased to submit these comments on the U.S. Department of Agriculture's Country of Origin Labeling (COOL) program. Our comments refer to the voluntary program set out in 67 F.R. 63367-63375, which USDA had indicated will be the likely platform for the mandatory program it will begin developing in April 2003. Though we respectably submit these comments, BERNARD EGAN & COMPANY supports an industry-driven, unregulated voluntary program with far greater flexibility vs. a mandatory program.

As the largest independently owned citrus marketer in the world and a substantial grower in the state of Florida, BERNARD EGAN & COMPANY anticipates a number of consequences to the implementation of a mandatory program. One major concern is cost. We would urge the USDA to re-evaluate the cost to the entire food chain including consumers. It is our opinion that costs are under estimated and do not reflect the full cost to retailers, suppliers such as BERNARD EGAN & COMPANY and others including the consumer who will ultimately pay the price for this program.

Costs to retailers will be immense – labor costs and costs to implement record keeping systems to adhere to federal guidelines will be substantial and that is only scatching the surface. In addition, information that retailers will be required to supply must be obtained from suppliers. They will take on additional expenses to ensure that their suppliers maintain verifiable audit trails and segregation plans.

Suppliers will take on considerable responsibility/cost in developing and maintaining verifiable audit trails and segregation plans as well. Additional costs such as labels/signs, which retailers may require to deliver information to the consumer, will fall upon the supplier as well. Record keeping elements alone represent a substantial cost as noted. In addition, significant costs will be associated with product segregation from the ranch/farm through to the retail store.

It is our concern that the USDA has underestimated the administrative and financial burden placed upon the suppliers. This law makes the retailer responsible for content and accuracy. As noted, the retailer has no independent knowledge of the source of the product it sells therefore the burden will be passed onto the supplier. Costs associated with getting product to the market, including all the new costs associated with COOL, will be pushed to the suppliers and in the end to the consumer. *Our intention is not to suggest that suppliers be exempt from these responsibilities.* It is however to bring attention to the fact that the burden will be large.

Changes to packaging, modification of electronic record keeping systems, loss of efficiency due to segregation of the product in warehouse and trucking as well as the cost of third party audits; all of these add up to higher prices for the consumer.

An additional point of concern is the likelihood that a retailer would require suppliers to use "PLU stickering" to satisfy the COOL requirements rather than signage. Due to a multitude of factors: type of labeling device used, type of product, age of labels and temperature/humidity at time of labeling, 100% accuracy simply cannot be guaranteed. Retailers currently allow a tolerance factor of 25 -30% of non-stickered items. It would be BERNARD EGAN & COMPANY's recommendation that the USDA accept this as a tolerance factor for compliance with COOL. Actual label content brings up another concern--state and regional designations. It is our understanding that the USDA has concluded that a state or regional designation such as "Florida Grown" or "California Navels" would not satisfy the notification of country origin. We respectfully disagree with that interpretation of the law. It is our belief that since this is a domestic program designed for U.S. consumers, that consumers would understand such labeling to indicate U.S. origin. A state/regional designation should be sufficient and would avoid the need to re-label these products.

BERNARD EGAN & COMPANY would like to address the penalties for willful violations. The guidelines note "the law provides enforcement procedures for the mandatory labeling program that includes fines, civil penalties and cease and desist orders for retailers, packers or other persons for willful violations." It is troublesome that under other statutes and regulations authorizing penalties for willful violations, the government had construed willful violations to include gross negligence, and the USDA might do the same in this case. It is our concern that suppliers will be held responsible for actions outside of their control.

As a supplier of imported citrus, we are concerned that improperly used, COOL could be distorted to lead the consumer to perceive that imported products are less safe and/or of lower quality than U.S. products. The USDA must make every effort to explain to consumers that imported products are not of lesser quality or safety. The agency has a responsibility to ensure consumers understand that COOL is not intended as a quality or safety program.

All of this having been said, it is BERNARD EGAN & COMPANY's belief that valuable resources will be spent on these government mandated marketing activities rather than true value-added services or lower cost for the consumer. A much simpler voluntary program for a domestic market initiative such as this, one based on industry efforts - not government regulation, would better serve consumers and industry. We support a legislative repeal.

BERNARD EGAN & COMPANY appreciates the opportunity to submit our comments. Should there be a need to clarify and expound on any of the comments expressed, please to not hesitate to contact us.

Sincerely,

David E. Mixon, Jr.
Vice President
Bernard Egan and Company